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**SECURITIES AND EXCHANGE COMMISSION**

Proposed Collection; Comment Request

Upon Written Request,  
Copies Available From:

Securities and Exchange Commission  
Office of Investor Education and Advocacy  
Washington, DC 20549-0213

Extension:

Rule 12b-1

SEC File No. 270-188

OMB Control No. 3235-0212

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12b-1 under the Investment Company Act of 1940 (17 CFR 270.12b-1) permits a registered open-end investment company ("fund" or "mutual fund") to bear expenses associated with the distribution of its shares, provided that the mutual fund complies with certain requirements, including, among other things, that it adopt a written plan ("rule 12b-1 plan") and that it has in writing any agreements relating to the rule 12b-1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b-1 plan be approved by the mutual fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b-1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b-1 plan and any related agreements at least annually. Rule 12b-1 also requires mutual funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b-1 plan.

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their

shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) the persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,771 mutual fund portfolios that have at least one share class subject to a rule 12b-1 plan.<sup>1</sup> However, many of these portfolios are part of an affiliated group of funds, or mutual fund family, that is overseen by a common board of directors. Although the board must review and approve the rule 12b-1 plan for each fund separately, we have allocated the costs and hourly burden related to rule 12b-1 based on the number of fund families that have at least one fund that charges rule 12b-1 fees, rather than

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<sup>1</sup> This estimate is based on information from the Commission's NSAR database.

on the total number of mutual fund portfolios that individually have a rule 12b-1 plan.<sup>2</sup> Based on information filed with the Commission, the staff estimates that there are approximately 375 fund families with common boards of directors that have at least one fund with a rule 12b-1 plan.

Based on previous conversations with fund representatives, Commission staff estimates that for each of the 375 mutual fund families with a portfolio that has a rule 12b-1 plan, the average annual burden of complying with the rule is 425 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's initial or annual consideration of whether to continue the plan.<sup>3</sup> We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b-1, is 159,375 hours (375 fund families x 425 hours per fund family = 159,375 hours).

If a currently operating fund seeks to (i) adopt a new rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b-1 plan, rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy.<sup>4</sup> Based on previous conversations with fund representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. Funds

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<sup>2</sup> This allocation is based on previous conversations with fund representatives on how fund boards comply with the requirements of rule 12b-1. Despite this allocation of hourly burdens and costs, the number of annual responses each year will continue to depend on the number of fund portfolios with rule 12b-1 plans rather than the number of fund families with rule 12b-1 plans. The staff estimates that the number of annual responses per fund portfolio will be four per year (quarterly, with the annual reviews taking place at one of the quarterly intervals). Thus, we estimate that funds will make 27,084 responses (6,771 fund portfolios x 4 responses per fund portfolio = 27,084 responses) each year.

<sup>3</sup> We do not estimate any costs or time burden related to the recordkeeping requirements in rule 12b-1, as funds are either required to maintain these records pursuant to other rules or would keep these records in any case as a matter of business practice.

<sup>4</sup> In general, a fund adopts a rule 12b-1 plan before it begins operations. Therefore, the fund is not required to obtain the approval of its public shareholders because the fund's shares have not yet been offered to the public.

typically hire outside legal counsel and proxy solicitation firms to prepare, print, and mail such proxies.

The staff further estimates that the cost of each fund's proxy is \$32,174. Thus the total annual cost burden of rule 12b-1 to the fund industry is \$96,522 (3 funds requiring a proxy x \$32,174 per proxy).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information required by Rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Kevin M. O'Neill  
Deputy Secretary

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